

DISCIPLINE DECISION

IN THE MATTER OF A DISCIPLINE HEARING HELD PURSUANT TO THE MOTOR
VEHICLE DEALERS ACT 2002, S.O. 2002, C.30, Sch. B

B E T W E E N :

REGISTRAR, *MOTOR VEHICLE DEALERS ACT, 2002*

- AND -

1802247 ONTARIO INC. o/a COLLINGWOOD HYUNDAI

-and-

PHILIP WALKER

-and-

STEPHEN ISMAN

Pursuant to Rule 1.07 of the Rules of Practice before the Discipline Committee and the Appeals Committee, I, the Chair of the Discipline Committee, have reviewed and considered the written Agreed Statement of Facts and Joint Submission on Penalty together with both Parties' waiver of a Hearing to this Proceeding and provide the following Order:

Date of Decision: September 24, 2020

Findings: Breach of Sections 4, 6 and 9 of the Code of Ethics

Order:

1. The Dealer is ordered to pay a fine in the amount of \$5,000 no later than **November 6, 2020**.
2. Walker is ordered to pay a fine in the amount of \$500 no later than **November 6, 2020**.
3. Isman is ordered to pay a fine in the amount of \$500 no later than **November 6, 2020**.
4. Walker is ordered to complete the MVDA Key Elements Course, in-person, no later than **March 5, 2021**. It is understood between the parties that this date is subject to any pandemic related disruptions Georgian College may experience offering this course within the specified time frame.

5. The Dealer is ordered to have all current and future staff to review the, “OMVIC August 2017 - Advertising Webinar,” no later than **November 6, 2020.**
6. The Dealer is ordered to offer all current and future sales staff the opportunity to complete the OMVIC Automotive Certification Course (the “Course”). Current sales staff will be offered the Course no later than **November 6, 2020.** Future sales staff will be offered the Course within 90 days of being retained in this capacity by the Dealer. The Dealer will incur all costs associated with this. It is understood between the parties this clause does not apply to sales staff who have completed the course after January 1, 2009, or who are otherwise required to do so pursuant to the Act.
7. The Dealer, Walker, and Isman agree to comply with the Act and Standards of Business Practice, as may be amended from time to time.

Written Reasons:

Reasons for Decision

Introduction

This matter proceeded on the basis of an Agreed Statement of Facts, Joint Submission on Penalty and the Parties’ Waiver of Hearing, pursuant to Rule 1.07 of the Rules of Practice before the Discipline Committee and the Appeals Committee.

Agreed Statement of Facts

The parties to this proceeding agree that:

1. 1802247 Ontario Inc. o/a Collingwood Hyundai (the “Dealer”) was first registered as a motor vehicle dealer in around September 2011. Philip Walker (“Walker”) was first registered as a motor vehicle salesperson in around October 1984. At all material times, Walker has been the Director and person in charge of the day to day activities of the Dealer.
2. Stephen Isman (“Isman”) was first registered as a motor vehicle salesperson in around April 1992.
3. On or about November 14, 2016, Isman successfully completed the Automobile Certification Course (the “Course”). Included in the course materials are dealer’s obligations towards all-in pricing.

OMVIC registrant education re: all-in pricing

4. Since the Dealer became registered, OMVIC has issued the following publications and webinars reminding dealers of their all-in pricing obligations, all of which continue to be available on OMVIC’s website:

	Dealer Standard		Bulletin		Webinar
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A	Spring 2011	U	February 2012	BB	April 2015
B	Winter 2013	V	August 2012	CC	April 2017
C	Spring 2013	W	April 2014		
D	Summer 2013	X	June 2014		
E	2014: Issue 1	Y	April 2015		
F	2014: Issue 2				
G	2014: Issue 3				
H	2015: Issue 3				
I	2015: Issue 4				
J	2016: Issue 1				
K	2016: Issue 2				
L	2016: Issue 3				
M	2016: Issue 4				
N	2017: Issue 2				
O	2017: Issue 2				
P	2017: Issue 3				
Q	2018: Issue 2				
R	2019: Issue 2				

Direct Correspondence with the Dealer

5. During an inspection of the Dealer on about December 7, 2011, a representative of the Registrar reminded Dealer of their obligations towards all-inclusive pricing.
6. In reference to a consumer complaint OMVIC received regarding an additional \$400 “Miscellaneous Fee” on a quote sheet, a formal letter was issued to the Dealer on May 29, 2019. The Dealer was reminded of their obligations towards all-inclusive pricing and it was suggested they schedule an advertising seminar/webinar about advertising with OMVIC education staff.

Dealer’s current non-compliance

7. On or before February 10, 2020, the Dealer published an advertisement for a 2015 Hyundai Elantra (Stock #0689A) with a selling price of \$10,888 and the following statement, “Prices do not include... other options, installations, administration and other program fees.”
8. On this same date, a representative of the Registrar made inquiries about the subject vehicle, while posing as a member of the public. Isman advised the Registrar’s representative that there are \$499 in additional fees plus HST. As such, the Dealer’s advertisement did not promote an all-inclusive price, contrary to section 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.
9. As a salesperson of the Dealer, Isman has failed to ensure that the Dealer conducts its business in compliance with the Act and Code of Ethics and thus he has personally contravened sections 6 and 9 of the Code of Ethics.

10. As the person in charge of the Dealer, Walker has failed to ensure that the Dealer conducts its business in compliance with the Act and Code of Ethics and thus he has personally contravened sections 6 and 9 of the Code of Ethics.

By failing to comply with the following:

Regulation 333/08

36: Advertising

(7) If an advertisement indicates the price of a motor vehicle, the price shall be set out in a clear, comprehensible and prominent manner and shall be set out as the total of,

- (a) The amount that a buyer would be required to pay for the vehicle; and
- (b) Subject to subsections (9) and (10), all other charges related to the trade in the vehicle, including, if any, charges for freight, charges for inspection before delivery of the vehicle, fees, levies and taxes.

It is thereby agreed that the Dealer has breached the following sections of the Code of Ethics, as set out in Regulation 332/08:

Disclosure and Marketing

4(2) A registrant shall ensure that all representations, including advertising, made by or on behalf of the registrant in connection with trading in motor vehicles, are legal, decent, ethical and truthful.

Professionalism

9(3) A registrant shall use the registrant's best efforts to prevent error, misrepresentation, fraud or any unethical practice in respect of a trade in a motor vehicle.

It is thereby agreed that Walker and Isman have breached the following sections of the Code of Ethics as set out in Regulation 332/08:

Accountability

6(2) A registered salesperson shall not do or omit to do anything that causes the registered motor vehicle dealer who employs or retains the salesperson to contravene this Regulation or any applicable law with respect to trading in motor vehicles.

Professionalism

9(1) In carrying on business, a registrant shall not engage in any act or omission that, having regard to all of the circumstances, would reasonably be regarded as disgraceful, dishonourable, unprofessional or unbecoming of a registrant.

Joint Submission on Penalty

1. The Dealer agrees to pay a fine in the amount of \$5,000 no later than **November 6, 2020**.
2. Walker agrees to pay a fine in the amount of \$500 no later than **November 6, 2020**.
3. Isman agrees to pay a fine in the amount of \$500 no later than **November 6, 2020**.
4. Walker agrees to complete the MVDA Key Elements Course, in-person, no later than **March 5, 2021**. It is understood between the parties that this date is subject to any pandemic related disruptions Georgian College may experience offering this course within the specified time frame.
5. The Dealer agrees to have all current and future staff to review the, "OMVIC August 2017 - Advertising Webinar," no later than **November 6, 2020**.
6. The Dealer agrees to offer all current and future sales staff the opportunity to complete the OMVIC Automotive Certification Course (the "Course"). Current sales staff will be offered the Course no later than **November 6, 2020**. Future sales staff will be offered the Course within 90 days of being retained in this capacity by the Dealer. The Dealer will incur all costs associated with this. It is understood between the parties this clause does not apply to sales staff who have completed the course after January 1, 2009, or who are otherwise required to do so pursuant to the Act.
7. The Dealer, Walker, and Isman agree to comply with the Act and Standards of Business Practice, as may be amended from time to time.

Decision of the Chair

Having reviewed and considered the Agreed Statement of Facts, the Chair of the Discipline Committee hereby concludes that the Dealer, Walker and Isman breached subsections 4, 6 and 9 of the OMVIC Code of Ethics, as set out in Ontario Regulation 332/08, made under the *Motor Vehicle Dealers Act, 2002*. The Chair of the Discipline Committee also agrees with the Parties' Joint Submission on Penalty and, accordingly, makes the following Order:

1. The Dealer is ordered to pay a fine in the amount of \$5,000 no later than **November 6, 2020**.
2. Walker is ordered to pay a fine in the amount of \$500 no later than **November 6, 2020**.
3. Isman is ordered to pay a fine in the amount of \$500 no later than **November 6, 2020**.
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7. The Dealer, Walker, and Isman agree to comply with the Act and Standards of Business Practice, as may be amended from time to time.

Ontario Motor Vehicle Industry Council
Discipline Committee

A handwritten signature in black ink, appearing to read "Paul Burroughs", with a horizontal line underneath it.

Paul Burroughs, Chair